

# CRS Report for Congress

Received through the CRS Web

## **General Management Laws and the 9/11 Commission's Proposed Office of National Intelligence Director (NID) and National Counterterrorism Center (NCTC)**

**September 21, 2004**

Clinton T. Brass and Curtis W. Copeland, Coordinators  
Government and Finance Division

Report Documentation Page				Form Approved OMB No. 0704-0188	
Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.					
1. REPORT DATE <b>21 SEP 2004</b>		2. REPORT TYPE		3. DATES COVERED <b>00-00-2004 to 00-00-2004</b>	
4. TITLE AND SUBTITLE <b>General Management Laws and the 9/11 Commission's Proposed Office of National Intelligence Director (NID) and National Counterterrorism Center (NCTC)</b>				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) <b>Congressional Research Service, Library of Congress, 101 Independence Ave., SE, Washington, DC, 20540-7500</b>				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT <b>Approved for public release; distribution unlimited</b>					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT <b>Same as Report (SAR)</b>	18. NUMBER OF PAGES <b>53</b>	19a. NAME OF RESPONSIBLE PERSON
a. REPORT <b>unclassified</b>	b. ABSTRACT <b>unclassified</b>	c. THIS PAGE <b>unclassified</b>			

# General Management Laws and the 9/11 Commission's Proposed Office of National Intelligence Director (NID) and National Counterterrorism Center (NCTC)

## Summary

To improve the organization and capabilities of the U.S. intelligence community, the National Commission on Terrorist Attacks Upon the United States (9/11 Commission) recommended, among other things, that two entities be established — a National Intelligence Director (NID) and a National Counterterrorism Center (NCTC). The commission said that the NID should be located within the Executive Office of the President (EOP), and said the NCTC should report to the NID. Legislation designed to create these entities would place them either within the EOP (e.g., H.R. 5024 and H.R. 5050) or within an independent entity outside of the EOP (e.g., S. 2774 and H.R. 5040).

Questions have been raised regarding a number of issues associated with the establishment of the NID and the NCTC. One set of such questions centers on whether these proposed entities would be covered by various “general management laws” — broad statutes designed to regulate the activities, procedures, and administration of all or most executive branch agencies in such areas as regulatory and information management, financial management, procurement, and strategic planning. Earlier in 2004, CRS published a compendium of these general management laws and a companion report on major themes from these laws, with possible management policy options (CRS Report RL30795, *General Management Laws: A Compendium*; and CRS Report RL32388, *General Management Laws: Major Themes and Management Policy Options*).

This report examines whether more than 50 general management laws (e.g., the Administrative Procedure Act, the Inspector General Act, and the Competition in Contracting Act) would cover the NID and the NCTC under two scenarios: (1) if the entities were established within the EOP, and (2) if the entities were established as or within independent entities in the executive branch. The analysis focuses on the *coverage* of the selected management laws, not on whether the laws are likely to *affect* or *apply* to the NID or the NCTC. Also, some of the laws allow exemptions or contain other provisions that can affect their coverage.

In general, the report indicates that more of these management laws would appear to cover the NID and NCTC if they were created as independent entities in the executive branch than if they were placed within the EOP. In many cases, it was unclear whether the statutes’ definitions of covered “agencies” included entities within the EOP. The report also indicates that Congress, if it so desires, could indicate that the NID and the NCTC would be covered by these management laws by either (1) amending the text of each of the management laws or (2) delineating in the statute creating the entities the particular management laws that should cover them.

This report will be updated if additional information becomes available about the coverage of the management laws or if legislation creating the NID and the NCTC (or similar entities) is enacted.

## Contents

Background .....	1
Legislation to Restructure the Intelligence Community .....	2
NID and NCTC and the Coverage of General Management Laws .....	4
General Management Laws .....	4
Table Showing Coverage of Laws .....	4
Table Structure and Contents .....	4
Summary of Findings .....	5
Considerations Regarding Table Contents .....	6
“Coverage” Versus “Application” of the Laws .....	6
Coverage Sometimes Unclear .....	6
Exemptions from Coverage .....	7
Certain Provisions Can Affect Coverage .....	8
Congress Could Indicate Whether Management Laws Cover NID and NCTC ...	8
Amending the Management Laws .....	8
Identification of Management Laws in Statute Creating NID/NCTC .....	9
Evaluating Options: Standardization vs. Customization .....	9

## List of Tables

Table 1. Coverage of General Management Laws and the 9/11 Commission’s Proposals .....	11
---	----

# General Management Laws and the 9/11 Commission's Proposed Office of National Intelligence Director (NID) and National Counterterrorism Center (NCTC)

The National Commission on Terrorist Attacks Upon the United States (9/11 Commission), established by the Intelligence Authorization Act for Fiscal Year 2003 (P.L. 107-306; 116 Stat. 2383, at 2408), criticized the structure of the U.S. intelligence community.<sup>1</sup> To improve the intelligence community's organization and capabilities, the commission recommended (among other things) that two entities be established — a National Intelligence Director (NID) and a National Counterterrorism Center (NCTC). The commission said the NID should be located within the Executive Office of the President (EOP), and said the NCTC should report to the NID. Legislation designed to create these entities would place them either within the EOP or within an independent entity outside the EOP.

This report examines whether more than 50 general management laws (e.g., the Administrative Procedure Act, the Inspector General Act, and the Competition in Contracting Act) would cover the NID and the NCTC under two scenarios: (1) if the entities were established within the EOP, and (2) if the entities were established as or within independent entities in the executive branch. The report also discusses how Congress, if it so desires, can indicate that these proposed entities would be covered by these management laws. First, however, the report provides some background information on the 9/11 Commission's recommendations and recent efforts to restructure the intelligence community.

## Background

The 9/11 Commission questioned whether the U.S. government, and the intelligence community in particular, are organized adequately to direct resources and build the intelligence capabilities that the U.S. will need to counter terrorism, and to address the broader range of national security challenges in the coming decade. The commission recommended, among other things, that

**[t]he current position of Director of Central Intelligence should be replaced by a National Intelligence Director with two main areas of responsibility: (1) to oversee national intelligence centers on specific subjects of interest across**

---

<sup>1</sup>U.S. National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report* (Washington: GPO, July 22, 2004), p. 399.

**the U.S. government and (2) to manage the national intelligence program and oversee the agencies that contribute to it.<sup>2</sup>**

The commission said the NID would be the principal intelligence advisor to the President, and “would submit a unified budget for national intelligence that reflects priorities chosen by the National Security Council, an appropriate balance among the varieties of technical and human intelligence collection, and analysis.”<sup>3</sup> The commission said the NID should be located in the EOP, would have a “relatively small staff of several hundred people,” would be confirmed by the Senate, and would testify before Congress.<sup>4</sup> The commission also recommended

**the establishment of a National Counterterrorism Center (NCTC), built on the foundation of the existing Terrorist Threat Integration Center (TTIC). Breaking the older mold of national government organization, this NCTC should be a center for joint operational planning *and* joint intelligence, staffed by personnel from the various agencies. The head of the NCTC should have authority to evaluate the performance of the people assigned to the Center.<sup>5</sup>**

The commission said the head of the NCTC should be appointed by the President, be confirmed by the Senate, testify before Congress, be equivalent in rank to a deputy head of a cabinet department, and report to the NID within the EOP.<sup>6</sup> The NCTC would override the current arrangement, in which the principal players — the Central Intelligence Agency and the Departments of Defense and Justice — were seen by the commission as operating without effective coordination and cooperation.

## **Legislation to Restructure the Intelligence Community**

The 9/11 Commission’s recommendations and several subsequent legislative initiatives are the most recent contributions to a debate on structural reform of the intelligence community that began nearly 50 years ago.<sup>7</sup> During the 107<sup>th</sup> and 108<sup>th</sup> Congresses, several Members of Congress have introduced legislation that would establish a position of Director of National Intelligence, or would strengthen the authority of the Director of Central Intelligence.<sup>8</sup>

---

<sup>2</sup>Ibid., p. 411.

<sup>3</sup>Ibid., p. 412.

<sup>4</sup>Ibid., p. 414.

<sup>5</sup>Ibid., p. 403.

<sup>6</sup>Ibid., p. 405.

<sup>7</sup>This report identifies legislation introduced or announced as of Sept. 15, 2004. For a discussion of this debate, see CRS Report RL32506, *The Position of Director of National Intelligence: Issues for Congress*, by Alfred Cumming. See also CRS Report RL32501, *9/11 Commission Recommendations: New Structures and Organization*, by Harold C. Relyea.

<sup>8</sup>See, for example, S. 2645 (107<sup>th</sup> Cong.), introduced June 19, 2002. For legislation in the 108<sup>th</sup> Congress, see S. 6, introduced on January 7, 2003; S. 190, introduced on January 17, (continued...)

For example, on September 7, 2004, a bipartisan group of Senators introduced legislation (S. 2774) to implement the recommendations made by the 9/11 Commission. In particular, the legislation would create an Office of the NID and the NCTC. However, in contrast to the commission's recommendation, the legislation would place the NID and the NCTC within an independent entity (the National Intelligence Authority), not within the EOP.<sup>9</sup> A House companion bill (H.R. 5040) was introduced on September 9, 2004, by Representative Christopher Shays (with 32 cosponsors).

On September 8, 2004, House Minority Leader Nancy Pelosi (with 117 cosponsors) introduced a bill (H.R. 5024) to implement the recommendations of the 9/11 Commission, including the establishment of the NID and NCTC. In contrast to the bills mentioned above (and consistent with the recommendations of the Commission), the legislation would place the proposed entities within the EOP. Another bill (H.R. 5050), introduced on September 9, 2004, by Representative Sheila Jackson-Lee, would establish a Director of National Intelligence within the EOP.

A news report stated that a "leadership bill" will be introduced by the end of September, reportedly by Speaker of the House J. Dennis Hastert.<sup>10</sup>

On September 15, 2004, Chairman Susan Collins and Ranking Member Joseph Lieberman of the Senate Committee on Governmental Affairs announced legislation to "reform the Executive Branch of the nation's intelligence community."<sup>11</sup> According to a fact sheet, the proposed entities would be placed in a National Intelligence Authority, not within the EOP.<sup>12</sup> Other legislation designed to establish the NID and the NCTC continues to be introduced.

On August 27, 2004, President George W. Bush issued Executive Order 13355, which was intended to strengthen the position of the Director of Central

---

<sup>8</sup>(...continued)

2004; S. 1520, introduced on July 31, 2003; H.R. 4104, introduced on April 1, 2004; and H.R. 4584, introduced on June 16, 2004. For a discussion of these legislative proposals, see CRS Report RL32506, *The Position of Director of National Intelligence: Issues for Congress*, by Alfred Cumming.

<sup>9</sup>According to a news report, the 9/11 Commission's vice chairman, Lee H. Hamilton, "said he withdrew the panel's proposal that the new national intelligence director be part of the executive office of the president, citing opposition from both the White House and Congress." Helen Dewar and Charles Babington, "Intelligence Retooling on Agenda as Congress Returns," *Washington Post*, Sept. 8, 2004, p. A4.

<sup>10</sup>*Ibid.*

<sup>11</sup>For the press release, see [[http://www.senate.gov/~gov\\_affairs/index.cfm?Fuseaction=PressReleases.Detail&PressRelease\\_id=796&Month=9&Year=2004&Affiliation=R](http://www.senate.gov/~gov_affairs/index.cfm?Fuseaction=PressReleases.Detail&PressRelease_id=796&Month=9&Year=2004&Affiliation=R)], visited Sept. 20, 2004.

<sup>12</sup>See [[http://www.senate.gov/~govt-aff/\\_files/091504billssummary.pdf](http://www.senate.gov/~govt-aff/_files/091504billssummary.pdf)], p. 2, visited Sept. 20, 2004.

Intelligence.<sup>13</sup> On the same day, he also issued Executive Order 13354, which established the NCTC, over which the Director of Central Intelligence “shall have authority, direction, and control.”<sup>14</sup> On September 8, 2004, President Bush indicated that the Administration sought legislation that would establish the NID position within the Executive Branch, but not within the EOP.

## **NID and NCTC and the Coverage of General Management Laws**

### **General Management Laws**

Questions have been raised regarding a number of issues associated with the establishment of the NID and the NCTC. One set of such questions centers on whether these proposed entities would be covered by various “general management laws” — broad statutes designed to regulate the activities, procedures, and administration of all or most executive branch agencies in such areas as regulatory and information management, financial management, procurement, and strategic planning. Earlier in 2004, CRS published a compendium of these general management laws and a companion report on major themes from these laws, with possible management policy options.<sup>15</sup>

To determine the coverage of these management laws in relation to the proposed NID and NCTC, CRS examined the scope of the laws under two scenarios — if the entities were established (1) within the EOP or (2) as or within independent entities in the executive branch. In both scenarios, CRS assumed that the entities would be established by Congress. This review included more than 50 such laws, but did not include laws related to human resource management (Title 5 of the *United States Code*) or intergovernmental relations (e.g., the Intergovernmental Cooperation Act).

### **Table Showing Coverage of Laws**

**Table Structure and Contents.** A table indicating the coverage of each management law in each scenario is included at the end of this report. The first column of the table identifies the general management laws and their locations in the table of contents for the previously mentioned compendium of these laws. The next three columns provide CRS’s best judgment regarding the coverage of each of the laws if the NID and the NCTC were established in the EOP — i.e., whether (1) the entities appear to be covered by the law; (2) the entities do not appear to be covered by the law; or (3) it is not clear if the entities would be covered. The next three

---

<sup>13</sup>Executive Order 13355, “Strengthened Management of the Intelligence Community,” 69 *Federal Register* 53593, Sept. 1, 2004.

<sup>14</sup>Executive Order 13354, “National Counterterrorism Center,” 69 *Federal Register* 53589, Sept. 1, 2004.

<sup>15</sup>CRS Report RL30795, *General Management Laws: A Compendium*, coordinated by Clinton T. Brass; and CRS Report RL32388, *General Management Laws: Major Themes and Management Policy Options*, by Clinton T. Brass.



columns indicate CRS's best judgments regarding the coverage of these laws if the NID and NCTC were established as independent entities within the executive branch. The last column indicates the CRS subject matter experts who may be contacted for further information about each of the general management laws. (For legal issues that relate to definitions of "agency," T. J. Halstead (7-7981) and Morton Rosenberg (7-7480), in CRS's American Law Division, are also available for further information and assistance.)

**Summary of Findings.** In general, this analysis indicated that more of these general management laws would appear to cover the NID and the NCTC if they were created as or within independent entities in the executive branch than if they were established within the EOP. In many cases, it was unclear whether the statutes' definitions of covered "agencies" included entities within the EOP. Therefore, if Congress chose to establish the proposed entities, the coverage of these management laws would appear to depend on where the entities were established.

**Within the EOP.** If the NID and the NCTC were established within the EOP, about half (26) of the general management laws included in this report would appear to cover, in whole or in part, the proposed entities.<sup>16</sup> Eleven of the laws would not appear to cover the entities within the EOP, and it was not clear whether they would be covered by 18 of the laws. For example, several of the statutes indicated they covered any "department, agency, or instrumentality" of the U.S. government, but it was not clear whether this construction would include the EOP or any of its constituent parts. Of the 11 laws that did not appear to cover the entities, four did not cover the entities because the laws had expired. (These laws were included in the CRS compendium because of continuing congressional interest in the subjects.) In other of these "not covered" cases, the laws (e.g., the Inspector General Act of 1978 and the Federal Managers' Financial Integrity Act of 1982) specifically list the covered agencies, and do not include the EOP; nor would they include the proposed entities.

**Independent Entities.** If the NID and the NCTC were established as or within independent entities in the executive branch, more than 75% (42) of the general management laws would appear to cover, in whole or in part, the proposed entities. In many cases, where it was unclear that a particular management law covered an "instrumentality" or "independent entity" within the EOP, it was more clear that the law would cover an independent agency or other entity within the executive branch. Of the 12 laws that did not appear to cover the entities, four would not do so because the laws have expired, and others did not appear to cover the entities because they were not included in a list of covered agencies. In only one case was it unclear whether the management law would apply to an independent entity.

---

<sup>16</sup>Some laws have provisions in which determinations of coverage are mixed. For example, in the EOP scenario, the Clinger-Cohen Act of 1996 has some provisions that would not cover the proposed entities, but also has provisions in which coverage is not clear. Conversely, in the independent agencies scenario, some provisions of the act would appear to cover the proposed entities, but others would not.

## Considerations Regarding Table Contents

Several points are important to consider with regard to the table's contents: (1) the analysis focuses on the *coverage* of the selected management laws with respect to the NID and the NCTC, not whether the laws are likely to *affect* or *apply to* these proposed entities; (2) the coverage of some of the laws in these scenarios is unclear; (3) Congress has previously exempted certain agencies from the coverage of some of the management laws; and (4) certain provisions in some of the laws may affect their coverage.

**“Coverage” Versus “Application” of the Laws.** This report focuses on whether an entity is *covered by* a statute, not on whether the law is likely to *affect* or *apply to* the entity's operations. For example, the Paperwork Reduction Act (PRA) specifically identifies the EOP in its definition of a covered “agency.” Therefore, if the NID and the NCTC were created as part of the EOP, we concluded that they would be *covered by* the PRA. However, if these entities never imposed any paperwork requirements on the public that triggered the PRA's requirements, the act would not *affect* or *apply to* their operations. Similarly, the National Environmental Policy Act might *cover* these entities (particularly if they were established as independent entities within the executive branch), but they might never take actions that triggered the requirement in the act for an environmental impact statement.

**Coverage Sometimes Unclear.** CRS determined whether the selected management laws would appear to cover the NID and the NCTC in particular scenarios based on the definitions and other terms provided in these laws — most commonly, how the terms “agency” or “executive agency” were defined. In some cases, however, determining the coverage of these management laws was difficult. As noted previously, this difficulty was most common in determining whether certain statutes applied to entities within the EOP. For example, the Federal Records Act covers any “independent establishment” in the executive branch, but this term is not defined in the act. Given the nature and missions of the various offices within the EOP (i.e., to help develop and implement the policies and programs of the President), it is not clear whether the NID or the NCTC would be considered “independent establishments” for purposes of the act if established within the EOP. In some cases, the coverage of these management laws might turn on the interpretations of the courts.

It should also be noted that coverage of the NID and the NCTC would not be ensured even in instances where the statutory definition either seems broad enough to include the EOP, or specifically includes the EOP within its ambit. For example, the Administrative Procedure Act (APA) defines “agency” to include “each authority of the Government of the United States, whether or not it is within or subject to review by another agency.”<sup>17</sup> While this definition could arguably apply to any governmental entity, the United States Court of Appeals for the District of Columbia has established that “the APA confers agency status on any administrative unit with

---

<sup>17</sup>5 U.S.C. § 551(1).

substantial independent authority in the exercise of specific functions.”<sup>18</sup> This standard has been of particular importance in the context of the Freedom of Information Act (FOIA), even though the act specifically includes the EOP in its definition of “agency.”<sup>19</sup> In *Meyer v. Bush*, for instance, the United States Court of Appeals for the District of Columbia determined that the Task Force on Regulatory Relief was not subject to FOIA even though it was located in the EOP, based on the fact that its duties were advisory in nature and that it “was not a body with ‘substantial independent authority’ to direct executive branch officials.”<sup>20</sup> Accordingly, the determination in the attached chart that the APA and FOIA would appear to cover the NID and the NCTC as part of the EOP is predicated upon the assumption that these entities would, in fact, be imbued with “substantial independent authority” in the exercise of their functions.<sup>21</sup>

**Exemptions from Coverage.** As the attached table indicates, many of the management laws that CRS examined would appear to cover the proposed NID and NCTC as part of the EOP, as independent entities, or in either situation. Congress could, however, exempt one or both of these entities from the coverage of certain laws — just as it has done for other entities engaged in sensitive or intelligence-related activities. For example, Congress specifically exempted the Central Intelligence Agency (CIA) from requirements of the Federal Advisory Committee Act (Section 4 of 5 U.S.C. Appendix 1), from “law and regulations relating to the expenditure of government funds” (50 U.S.C. § 403j(b)), and from the Government Performance and Results Act (GPRA; 5 U.S.C. § 306(f)).<sup>22</sup> Some of the management laws also allow other entities to exempt certain agencies or activities from coverage. For example, GPRA allows the Office of Management and Budget (OMB) to exempt agencies with annual outlays of \$20 million or less from certain requirements.

---

<sup>18</sup>*Soucie v. David*, 448 F.2d 1067, 1073 (1971).

<sup>19</sup>5 U.S.C. § 552(f)(1).

<sup>20</sup>*Meyer v. Bush*, 981 F.2d 1288, 1297 (D.C. Cir. 1993).

<sup>21</sup>This standard is likewise applicable to the Privacy Act, which incorporates the definition of “agency” as used in FOIA.

<sup>22</sup>GPRA is codified at 5 U.S.C. prec. § 301, § 306; 31 U.S.C. § 1101 and nt, § 1105, §§ 1115-1119, prec. § 9701, §§ 9703-9704; 39 U.S.C. prec. § 2001, §§ 2801-2805. If precedent were followed, it is possible that the NID and the NCTC would be excluded from GPRA’s coverage. According to the 9/11 Commission report, the NCTC would “be built on the foundation of the existing Terrorist Threat Integration Center” (p. 403), which is located in the CIA. The CIA was excluded from GPRA’s coverage by 5 U.S.C. § 306(f). According to GPRA’s legislative history, the CIA was excluded largely because most of its budget is classified, and because the GPRA plans and reports it would prepare would be classified (S. Rep. 103-58, *Government Performance and Results Act of 1993*). OMB reported to Congress in 1997 that “OMB consulted with the Agency leadership about this matter, and the CIA agreed to comply voluntarily with the basic provisions of GPRA” (*The Government Performance and Results Act, Report to the President and Congress from the Director of the Office of Management and Budget*, May 1997.) Congress subsequently enacted P.L. 104-293, the Intelligence Authorization Act for FY1997, to require performance reports on intelligence activities, requirements, and evaluations (Secs. 803 and 808 of P.L. 104-293).

**Certain Provisions Can Affect Coverage.** For some of the general management laws included in the attached table, even though these laws would normally cover the proposed NID and NCTC, certain provisions could affect this coverage. For example, the entry for the Davis-Bacon Act notes that, while the act would appear to cover the NID and the NCTC (either as part of the EOP or as independent entities), the President can suspend the act during a “national emergency.” Also, the Chief Financial Officers (CFO) Act of 1990 technically does not cover the EOP, but a 1999 amendment to the act created a separate CFO for the EOP. The President can, under this amendment, determine what authority and functions apply to the CFO for the EOP. Although the table notes several of these provisions, it should not be relied upon to highlight all important nuances in the coverage of general management laws.<sup>23</sup>

## **Congress Could Indicate Whether Management Laws Cover NID and NCTC**

If Congress decided to create the NID and the NCTC and wanted to indicate that these entities should be covered by certain management laws, two general approaches would be available — (1) amending the text of each of the relevant management laws to indicate that the entities being created should be considered covered by these laws, or (2) including a provision in the statute creating these entities indicating which of the management laws cover them. Although either of these general approaches would accomplish this objective, each has particular advantages and disadvantages.

### **Amending the Management Laws**

In the first approach, Congress, after creating the NID and the NCTC, could consider amending the text of selected general management laws to indicate clearly that they cover the new entities. For example, the Chief Financial Officers (CFO) Act of 1990 lists the agencies covered by its requirements at 31 U.S.C. § 901(b). If Congress wanted to have the CFO Act cover one or both new entities, Congress could add the entity or entities to this list, and thereby put the complete list of covered agencies at one location in the *United States Code*. Similar action would be required for each of the statutes that Congress considers relevant. A possible advantage of this approach would be that, in comparison to the second alternative, it would be easier for an interested party to determine the coverage of a specific general management law when specific agencies were delineated. However, this approach also could have several disadvantages. For example, making changes in statutory language to dozens of particular statutes would likely be significantly more difficult than the alternative approach, and more likely to result in jurisdictional issues among congressional committees.

---

<sup>23</sup>As alternatives, see CRS Report RL30795, *General Management Laws: A Compendium*, coordinated by Clinton T. Brass, or call the CRS experts listed in the table.

## Identification of Management Laws in Statute Creating NID/NCTC

In the second approach, Congress could specifically delineate the particular management laws that should cover the NID and the NCTC in the statute creating them. This listing of management laws could include all such laws that Congress considers relevant (including those that already would appear to cover the proposed entities) in order to clearly establish congressional intent. Alternatively, the listing could focus only on either those statutes that do not appear to cover the new entities, or those for which coverage is uncertain.

In either case, the statute creating the entities could state that they “shall be considered to be covered by the requirements of ...,” with a listing of all relevant management laws provided (e.g., the Federal Register Act and the APA). Or, more specifically, the statute could include language defining a covered “agency” (or other term, depending on the specific management laws) by referring to the definitions in the management laws themselves, such as the following:

The [NID/NCTC] shall be considered to be a covered “agency” for purposes of the Administrative Procedure Act, as defined at 5 U.S.C. 551(1); ... [add other applicable management laws and code citations].

Some potential advantages of this general approach include relative ease of statutory drafting and fewer jurisdictional issues than with the first approach (amending each management law). However, this approach might make it more difficult for an interested party to determine the coverage of a given law (particularly for those laws that list the covered agencies), because to do so, the party would have to find all provisos of interest, which might be included in many parts of the *United States Code*. For example, if the statute creating the NID and the NCTC indicated that one or both of the entities should be covered by the CFO Act, an interested party attempting to compile a list of agencies with CFOs would have to know to examine not only the CFO Act, but also the statute creating the new entities.

## Evaluating Options: Standardization vs. Customization

When considering whether these general management laws should cover the proposed NID and NCTC, if any, or whether alternative or new management-related laws should be enacted, Congress might consider an issue that it has previously confronted when reorganizing or creating agencies — whether all (or virtually all) these management laws should cover all (or virtually all) agencies, or whether each agency should be governed by a customized set of these laws. Some assert that the laws should cover as many agencies as possible, arguing that less coverage would lessen the laws’ importance and influence, and would potentially make it more difficult for Congress to hold the President and agencies accountable for their administration. Others contend that each agency is sufficiently different to merit individualized attention, and that there should be no presumption of coverage with regard to any specific agency — particularly with regard to intelligence agencies or other entities that deal with sensitive or classified information. For analysis and

discussion of potential advantages and disadvantages of approaches to these decisions, see CRS Report RL32388, *General Management Laws: Major Themes and Management Policy Options*, pp. 13-15.

**Table 1. Coverage of General Management Laws and the 9/11 Commission's Proposals**

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Federal Register Act (I.A. in RL30795)	X (Falls within the definition of “agency” in the act (44 U.S.C. § 1501) for required or authorized publication of designated documents (44 U.S.C. § 1505).)			X (Falls within the definition of “agency” in the act (44 U.S.C. § 1501) for required or authorized publication of designated documents (44 U.S.C. § 1505).)			Harold C. Relyea, 7-8679

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Administrative Procedure Act (APA) (I.B. in RL30795)	X (The definition of “agency” in the act (5 U.S.C. § 551(1)) covers each authority of the government, “whether or not it is within or subject to review by another agency.” However, if either proposed entity were strictly advisory in nature, it would not be covered.)			X (The definition of “agency” in the act (5 U.S.C. § 551(1)) covers each authority of the government, “whether or not it is within or subject to review by another agency.” However, if either proposed entity were strictly advisory in nature, it would not be covered.)			Morton Rosenberg, 7-7480; T. J. Halstead, 7-7981



General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Federal Records Act and Related Chapters of Title 44 (I.C. in RL30795)			X (The act covers any “executive agency,” which is defined (40 U.S.C. § 472(a)) as any executive department or “independent establishment” in the executive branch. It appears that an entity within the EOP would not be considered an “independent establishment,” but it is not clear.)	X (The act covers any “executive agency,” which is defined (40 U.S.C. § 472(a)) as any executive department or “independent establishment” in the executive branch. An independent entity would likely be considered an “independent establishment.”)			Harold C. Relyea, 7-8679

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Congressional Review of Regulations Act (CRA) (I.D. in RL30795)	X (The definition of “agency” in the act refers to the definition in the APA (5 U.S.C. § 551(1)), which covers each authority of the government, “whether or not it is within or subject to review by another agency.” As with the APA, however, if either organization were strictly advisory in nature, it would not be covered.)			X (The definition of “agency” in the act refers to the definition in the APA (5 U.S.C. § 551(1)), which covers each authority of the government, “whether or not it is within or subject to review by another agency.” As with the APA, however, if either organization were strictly advisory in nature, it would not be covered.)			Morton Rosenberg, 7-7480

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Freedom of Information Act (I.E. in RL30795)	X (Falls within the definition of “agency” in the act (5 U.S.C. § 552(f)), which specifically includes the EOP. As with the APA, however, if either organization were strictly advisory in nature, it would not be covered.)			X (Falls within the definition of “agency” in the act (5 U.S.C. § 552(f)), which includes any “establishment” in the executive branch. As with the APA, however, if either organization were strictly advisory in nature, it would not be covered.)			Harold C. Relyea, 7-8679

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Privacy Act (I.F. in RL30795)	X (Falls within the definition of “agency” in the act (5 U.S.C. § 552a(a)(1), referencing 5 U.S.C. § 552(f)), which specifically includes the EOP. As with the APA, however, if either organization were strictly advisory in nature, it would not be covered.)			X (Falls within the definition of “agency” in the act (5 U.S.C. § 552a(a)(1), referencing 5 U.S.C. § 552(f)), which includes any “establishment” in the executive branch. As with the APA, however, if either organization were strictly advisory in nature, it would not be covered.)			Harold C. Relyea, 7-8679

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Federal Advisory Committee Act (I.G. in RL30795)	X (Falls within the definition of “agency” in the act (5 U.S.C. § 551(1)), although Congress currently exempts advisory committees used by the CIA.)			X (Falls within the definition of “agency” in the act (5 U.S.C. § 551(1)), although Congress currently exempts advisory committees used by the CIA.)			Stephanie Smith, 7-8674
Government in the Sunshine Act (I.H. in RL30795)		X (Would not cover the proposed entities unless established as collegially headed executive branch agencies with two or more members, most of whom are appointed by the President and confirmed by the Senate.)			X (Would not cover the proposed entities unless established as collegially headed executive branch agencies with two or more members, most of whom are appointed by the President and confirmed by the Senate.)		Henry Hogue, 7-0642

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Paperwork Reduction Act (I.I. in RL30795)	X (Falls within the definition of “agency” in the act (44 U.S.C. § 3502), which specifically includes the EOP.)			X (Falls within the definition of “agency” in the act (44 U.S.C. § 3502), which includes virtually any “establishment” in the executive branch.)			Harold C. Relyea, 7-8679

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Regulatory Flexibility Act of 1980 (I.J. in RL30795)	X (The definition of “agency” in the act refers to the definition in the APA (5 U.S.C. § 551(1)), which covers each authority of the government, “whether or not it is within or subject to review by another agency.” As with the APA, however, if either organization were strictly advisory in nature, it would not be covered.)			X (The definition of “agency” in the act refers to the definition in the APA (5 U.S.C. § 551(1)), which covers each authority of the government, “whether or not it is within or subject to review by another agency.” As with the APA, however, if either organization were strictly advisory in nature, it would not be covered.)			Curtis Copeland, 7-0632

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Negotiated Rulemaking Act (I.K. in RL30795)	X (The definition of “agency” in the act (5 U.S.C. § 562(1)) refers to the definition in the APA (5 U.S.C. § 551(1)), which covers each authority of the government, “whether or not it is within or subject to review by another agency.” As with the APA, however, if either organization were strictly advisory in nature, it would not be covered.)			X (The definition of “agency” in the act (5 U.S.C. § 562(1)) refers to the definition in the APA (5 U.S.C. § 551(1)), which covers each authority of the government, “whether or not it is within or subject to review by another agency.” As with the APA, however, if either organization were strictly advisory in nature, it would not be covered.)			Curtis Copeland, 7-0632



General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
National Environmental Policy Act (I.L. in RL30795)			X (The requirements in 42 U.S.C. § 4332 cover “all agencies of the Federal Government,” which is not defined. It is not clear whether “all agencies” includes the EOP.)	X (The requirements in 42 U.S.C. § 4332 cover “all agencies of the Federal Government,” and other independent agencies are covered by the act.)			Harry Steven Hughes, 7-7268
E-Government Act (Titles II, III, V) (I.M. in RL30795)	X (Section 201 of the act says the definitions in the PRA generally apply, which defines “agency” (44 U.S.C. § 3502(1)) as including the EOP.)			X (Section 201 of the act says the definitions in the PRA generally apply, which defines “agency” (44 U.S.C. § 3502(1)) as including virtually any establishment in the executive branch.)			Harold C. Relyea, 7-8679; Jeffrey W. Seifert, 7-0781

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Federal Information Security Management Act of 2002 (I.N. in RL30795)	X (The act amends the PRA, which specifically defines “agency” (44 U.S.C. § 3502) as including the EOP.)			X (The act amends the PRA, which defines “agency” (44 U.S.C. § 3502) to include virtually any establishment in the executive branch.)			John Moteff, 7-1435
Data Quality Act (Information Quality Act) (I.O. in RL30795)	X (The act amends the PRA, which specifically defines “agency” (44 U.S.C. § 3502) as including the EOP.)			X (The act amends the PRA, which defines “agency” (44 U.S.C. § 3502) to include virtually any establishment in the executive branch.)			Curtis Copeland, 7-0632; Michael Simpson, 7-7010

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Inspector General Act of 1978 (II.A. in RL30795)		X (The act (5 U.S.C. App., § 11) lists the specific departments and agencies that are covered; it does not include either the EOP and would not include the proposed entities. However, note 50 U.S.C. § 403q establishing an inspector general for the CIA.)			X (The act (5 U.S.C. App., § 11) lists the specific departments and agencies that are covered, and would not include the proposed entities. However, note 50 U.S.C. § 403q establishing an inspector general for the CIA.)		Frederick Kaiser, 7-8682

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Government Performance and Results Act of 1993 (II.B. in RL30795)			X (GPRA defines “agency” (5 U.S.C. § 306(f), 31 U.S.C. § 1115(f), and 5 U.S.C. § 105) as “an Executive department, a Government corporation, and an independent establishment,” but exempts the CIA due to its classified activities. It is not clear if this definition includes the EOP. OMB may exempt agencies with annual outlays of \$20 million or less.)			X (GPRA defines “agency” (5 U.S.C. § 306(f), 31 U.S.C. § 1115(f), and 5 U.S.C. § 105) as “an Executive department, a Government corporation, and an independent establishment,” but exempts the CIA due to its classified activities. P.L. 104-293, Sections 803 and 808, have separate reporting requirements for intelligence agencies. OMB may exempt agencies with annual outlays of \$20 million or less.)	Genevieve J. Knezo, 7-6610

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Clinger-Cohen Act of 1996 (II.C. in RL30795)		X (Different provisions of the Clinger-Cohen Act (e.g., 40 U.S.C. 1425(c)) identify different sets of agencies as being covered (e.g., 5 U.S.C. § 101, 31 U.S.C. § 901(b)). However, these provisions do not indicate that EOP is covered.)	X (Provisions of the act (e.g., 40 U.S.C. § 1421 et seq.) that cover an “executive agency” (defined at 40 U.S.C. § 1401, which points to 41 U.S.C. § 403(1)) cover an “independent establishment.” It is unclear if an entity within the EOP is considered an “independent establishment.”)	X (Provisions of the act (e.g., 40 U.S.C. § 1421 et seq.) that cover an “independent establishment” (included in the definition of “executive agency” defined at 40 U.S.C. § 1401, which points to 41 U.S.C. § 403(1)) would appear to cover these independent entities.)	X (Provisions of the act that cover specified departments or agencies (e.g., CFO Act agencies as identified in 31 U.S.C. § 901(b)) do not apply to other independent entities in the executive branch.)		Jeffrey W. Seifert, 7-0781

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Antideficiency Act (III.A. in RL30795)	X (The act covers any “officer or employee of the United States Government” (31 U.S.C. § 1341(a)(1)), which presumably includes the EOP.)			X (The act covers any “officer or employee of the United States Government” (31 U.S.C. § 1341(a)(1)), which presumably includes independent entities in the executive branch.)			Virginia McMurtry, 7-8678
Budget and Accounting Act of 1921 (III.B. in RL30795)	X (Unless otherwise provided for, the proposed entities’ budgets would be covered by the act in the same way as other parts of the EOP.)			X (Unless otherwise provided for, the proposed entities’ budgets would be covered by the act in the same way as other independent entities in the executive branch.)			James V. Saturno, 7-2381

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Budget and Accounting Procedures Act of 1950 (III.C. in RL30795)	X (The act is generally applicable to federal agencies. However, note 50 U.S.C. § 403j(b) exempting the CIA from laws and regulations relating to the expenditure of government funds.)			X (The act is generally applicable to federal agencies. However, note 50 U.S.C. § 403j(b) exempting the CIA from laws and regulations relating to the expenditure of government funds.)			Bob Lyke, 7-7355
Balanced Budget and Emergency Deficit Control Act (III.D. in RL30795)		X (This law expired at the end of FY2002.)			X (This law expired at the end of FY2002.)		Robert Keith, 7-8659

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Budget Enforcement Acts of 1990 and 1997 (III.E. in RL30795)		X (These laws expired at the end of FY2002.)			X (These laws expired at the end of FY2002.)		Robert Keith, 7-8659; Bill Heniff, 7-8646
Congressional Budget and Impoundment Act (III.F. in RL30795)	X (The entities' budgets would be covered by the act in the same way as other parts of the EOP.)			X (The entities' budgets would be covered by the act in the same way as other independent entities in the executive branch.)			James V. Saturno, 7-2381



General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Chief Financial Officers Act of 1990 (III.G. in RL30795)	X (The original act listed (in 31 U.S.C. § 901(b)) specific covered departments and agencies, but did not include the EOP and would not include the proposed entities. However, the EOP has a statutory CFO (31 U.S.C. § 901(c)(1)-(4)), distinct from the original CFO Act agencies. The authority and functions of the EOP CFO are at the discretion of the President.)				X (The act lists (in 31 U.S.C. § 901(b)) the specific departments and agencies that are covered, and would not include these entities.)		Virginia McMurtry, 7-8678

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Government Management Reform Act of 1994 (III.H. in RL30795)	X (Certain provisions of the act (e.g., direct deposit of federal wage, salary, and retirement payments) cover all agencies, including the EOP.)	X (The financial reporting requirements in section 405 cover only agencies listed in 31 U.S.C. § 901(b). The EOP is not listed, nor would the proposed entities be listed.)		X (Certain provisions of the act (e.g., direct deposit of federal wage, salary, and retirement payments) cover all agencies, including the independent entities.)	X (The financial reporting requirements in section 405 cover only agencies listed in 31 U.S.C. § 901(b). The proposed entities would not be listed.)		Virginia McMurtry, 7-8678
Accountability of Tax Dollars Act of 2002 (III.I. in RL30795)			X (Definition of a “covered executive agency” (31 U.S.C. § 3515(f)) suggests that the act would cover the proposed entities in the EOP, but ultimately is unclear.	X (Definition of a “covered executive agency” (31 U.S.C. § 3515(f)) indicates that the act would cover the proposed entities.)			Virginia McMurtry, 7-8678

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Federal Managers’ Financial Integrity Act of 1982 (III.J. in RL30795)		X (The act refers to the definition of “agency” in 31 U.S.C. § 901(b), which lists specific agencies that are covered and does not include either the EOP or these proposed entities.)			X (The act refers to the definition of “agency” in 31 U.S.C. § 901(b), which lists specific agencies that are covered and would not include the proposed entities.)		Frederick Kaiser, 7-8682
Federal Financial Management Improvement Act of 1996 (III.K. in RL30795)		X (This act covers only CFO Act agencies (see 31 U.S.C. § 901(b)), which do not include either the EOP or these proposed entities.)			X (This act covers only CFO Act agencies (see 31 U.S.C. § 901(b)), which would not include the proposed entities.)		Virginia McMurtry, 7-8678

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Federal Credit Reform Act of 1990 (III.L. in RL30795)	X (The act (2 U.S.C. § 661a) covers any “disbursement of funds by the Government to a non-Federal borrower under a contract that requires repayment of such funds with or without interest.” Therefore it appears to cover such activities within the EOP.)			X (The act (2 U.S.C. § 661a) covers any “disbursement of funds by the Government to a non-Federal borrower under a contract that requires repayment of such funds with or without interest.” Therefore it appears to cover such activities by independent entities within the executive branch.)			James Bickley, 7-7794

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Federal Claims Collection Act of 1966; Debt Collection Act of 1982; Debt Collection Improvement Act of 1996 (III.M., III.N., and III.P. in RL30795)  (These statutes have been combined because the 1982 and 1996 acts amend the 1966 act.)			X (The statutes broadly cover “executive, legislative, and judicial agencies,” but it is unclear whether this includes elements of the EOP.)	X (The statutes broadly cover “executive, legislative, and judicial agencies,” so they appear to cover independent entities within the executive branch.)			Thomas Nicola, 7-5004

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Federal Debt Collection Procedures Act of 1990 (III.O. in RL30795)			X (This statute broadly covers any “agency, department, commission, board, or other entity of the U.S. or an instrumentality of the U.S.,” but it is unclear whether this includes elements of the EOP.)	X (This statute broadly covers any “agency, department, commission, board, or other entity of the U.S. or an instrumentality of the U.S.”)			Thomas Nicola, 7-5004

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Improper Payments Information Act of 2002 (III.Q. in RL30795)			X (This act covers “executive agencies” per 31 U.S.C. § 102, which broadly defines the term as a “department, agency, or instrumentality” of the U.S. government, but it is not clear whether this includes the EOP.)	X (This act covers “executive agencies” per 31 U.S.C. § 102, which broadly defines the term as a “department, agency, or instrumentality” of the U.S. government.)			Virginia McMurtry, 7-8678

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Cash Management Improvement Act of 1990 (III.R. in RL30795)			X (This act covers “executive agencies” per 31 U.S.C. § 102, which broadly defines the term as a “department, agency, or instrumentality” of the U.S. government, but it is not clear whether this includes the EOP.)	X (This act covers “executive agencies” per 31 U.S.C. § 102, which broadly defines the term as a “department, agency, or instrumentality” of the U.S. government.)			Steven Maguire, 7-7841



General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
User Fee Act of 1951 (III.S. in RL30795)			X (This act covers “executive agencies” per 31 U.S.C. § 102, which broadly defines the term as a “department, agency, or instrumentality” of the U.S. government, but it is not clear whether this includes the EOP.)	X (This act covers “executive agencies” per 31 U.S.C. § 102, which broadly defines the term as a “department, agency, or instrumentality” of the U.S. government.)			Frederick Kaiser, 7-8682
Government Corporation Control Act (IV.A. in RL30795)		X (This act (31 U.S.C. § 9101) covers government corporations, which does not include entities within the EOP.)			X (This act (31 U.S.C. § 9101) covers government corporations, which does not include independent entities in the executive branch.)		Kevin Kosar, 7-3968

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Reorganization Act of 1977, as Amended (IV.B. in RL30795)		X (Reorganization authority expired in 1984 and would therefore not be in effect.)			X (Reorganization authority expired in 1984 and would therefore not be in effect.)		Henry Hogue, 7-0642
Federal Vacancies Reform Act of 1998 (IV.C. in RL30795)	X (The act (5 U.S.C. § 3345) covers all advice and consent positions, and specifically mentions the EOP.)			X (The act (5 U.S.C. § 3345) covers all advice and consent positions.)			Morton Rosenberg, 7-7480

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Public Buildings Act (V.A. in RL30795)			X (The act covers “executive agencies,” which is defined (40 U.S.C. § 3301) as an executive department or independent establishment in the executive branch of the federal government. It is unclear whether this includes the EOP.)	X (The act covers “executive agencies,” which is defined (40 U.S.C. § 3301) as an executive department or independent establishment in the executive branch of the federal government.)			Stephanie Smith, 7-8674

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Federal Acquisition Streamlining Act (V.B. in RL30795)			X (The act (40 U.S.C. § 102) defines an executive agency as an executive department or independent establishment, or a wholly owned government corporation. It does not indicate that the EOP is included.)	X (The act (40 U.S.C. § 102) defines an executive agency as including independent establishments.)			Stephanie Smith, 7-8674

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Federal Activities Inventory Reform (FAIR) Act of 1998 (V.C. in RL30795)			X (The act defines covered “agencies” by referring to 5 U.S.C. § 104 on independent establishments, but excludes the Government Accountability Office (GAO), government corporations, and others. It is unclear if an entity within the EOP is considered an “independent establishment.”)	X (The act defines covered “agencies” by referring to, e.g., 5 U.S.C. § 104 (GAO and independent establishments other than the Postal Service and the Postal Rate Commission), but specifically excludes GAO, government corporations, and others. Therefore, if the proposed entities were independent agencies, they would appear to be covered by the act.)			Elaine Halchin, 7-0646

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Services Acquisition Reform Act (SARA) of 2003 (V.D. in RL30795)			X (The act defines the term “executive agency” by referring to 5 U.S.C. § 101, § 102, and § 104(1) (independent establishments), and wholly owned corporations subject to Chapter 91 of Title 31. It is unclear if an entity within the EOP would be considered an “independent establishment.”)	X (The act defines the term “executive agency” by referring to 5 U.S.C. 104(1) (independent establishments), which appears to include independent agencies in the executive branch.)			Elaine Halchin, 7-0646

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Competition in Contracting Act (V.E. in RL30795)			X (The act (41 U.S.C. § 252) directs “executive agencies” to make purchases and contracts for services in accordance with its provisions. It is not clear whether this definition includes the EOP.)	X (The act (41 U.S.C. § 252) directs “executive agencies” to make purchases and contracts for services in accordance with its provisions.)			Michael Seitzinger, 7-7895

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Davis-Bacon Act (V.F. in RL30795)	X (The act generally covers all contracts in excess of \$2,000 to which the federal government is a party. However, the act may not cover instances when funds are channeled through a non-federal entity (e.g., a state revolving fund). Also, the President can suspend the act during a “national emergency” (not defined).			X (The act generally covers all contracts in excess of \$2,000 to which the federal government is a party. However, the act may not cover instances when funds are channeled through a non-federal entity (e.g., a state revolving fund). Also, the President can suspend the act during a “national emergency” (not defined).			William Whittaker, 7-7759; Morton Rosenberg, 7-7480



General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Walsh-Healey Act (V.F. in RL30795)			X (The act (41 U.S.C. § 35) indicates that it covers (among others) any “agency or instrumentality of the United States.” However, it may not be fully clear whether entities within the EOP are covered.)	X (The act covers any “agency or instrumentality of the United States,” so it would likely cover the proposed entities. However, the act does not cover certain types of purchases, and may not cover instances when funds are channeled through a non-federal entity or when requirements “will seriously impair the conduct of Government business.”)			William Whittaker, 7-7759; Morton Rosenberg, 7-7480

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
McNamara-O'Hara Service Contract Act (V.F. in RL30795)	X (The act (41 U.S.C. § 351) generally covers all contracts in excess of \$2,500 entered into by the United States, “the principal purpose of which is to furnish services in the United States through the use of service employees.”			X (The act (41 U.S.C. § 351) generally covers all contracts in excess of \$2,500 entered into by the United States, “the principal purpose of which is to furnish services in the United States through the use of service employees.”			William Whittaker, 7-7759; Morton Rosenberg, 7-7480

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Prompt Payment Act (V.G. in RL30795)	X (The definition of “agency” in the act refers to the definition in the APA (5 U.S.C. § 551(1)), which covers each authority of the government, “whether or not it is within or subject to review by another agency.” As with the APA, however, if either organization were strictly advisory in nature, it would not be covered.)			X (The definition of “agency” in the act refers to the definition in the APA (5 U.S.C. § 551(1)), which covers each authority of the government, “whether or not it is within or subject to review by another agency.” As with the APA, however, if either organization were strictly advisory in nature, it would not be covered.)			John Luckey, 7-7897

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Ethics in Government Act (VII.B. in RL30795)	X (The financial disclosure requirements in the act (5 U.S.C. App.) generally cover each officer or employee in the executive branch above GS-15 in the General Schedule (or equivalent).)			X (The financial disclosure requirements in the act (5 U.S.C. App.) generally cover each officer or employee in the executive branch above GS-15 in the General Schedule (or equivalent).)			Mildred Amer, 7-8304
Ethics Reform Act of 1989 (VII.C. in RL30795)	X (The act amended the Ethics in Government Act, so its coverage is the same as above.)			X (The act amended the Ethics in Government Act, so its coverage is the same as above.)			Mildred Amer, 7-8304

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Lobbying with Appropriated Monies Act (VII.D. in RL30795)	X (The act (18 U.S.C. § 1913) generally covers “money appropriated by any enactment of Congress.” Therefore, it appears to cover entities within the EOP as long as they receive appropriated funds.)			X (The act (18 U.S.C. § 1913) generally covers “money appropriated by any enactment of Congress.” Therefore, it appears to cover independent entities within the executive branch as long as they receive appropriated funds.)			Louis Fisher, 7-8676

General Management Law (location in CRS Report RL30795)	If the Office of the National Intelligence Director (NID) and National Counterterrorism Center (NCTC) were established ...						CRS Analyst, Telephone Number
	... in the Executive Office of the President (EOP), the NID and the NCTC appear to be:			... as independent entities, outside the EOP, but in the executive branch, the NID and the NCTC appear to be:			
	Covered	Not Covered	Not Clear	Covered	Not Covered	Not Clear	
Federal Tort Claims Act (VII.E. in RL30795)			X (The act (28 U.S.C. § 2671) covers a wide range of entities, including “executive departments” and “independent establishments of the United States,” but is not clear about whether the EOP falls within these categories.)	X (The act (28 U.S.C. § 2671) covers “independent establishments” of the U.S. government.)			Henry Cohen, 7-7892